

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

ANNA McMANNIS)	
Claimant)	
)	
V.)	
)	
LOWE'S)	
Respondent)	Docket No. 1,050,291
)	
AND)	
)	
LOWE'S HOME CENTERS, INC.)	
Insurance Carrier)	

ORDER

STATEMENT OF THE CASE

Claimant requested review of the June 12, 2015, Order entered by Administrative Law Judge (ALJ) Thomas Klein. The Board heard oral argument on October 6, 2015. Claimant appeared pro se. Claimant's former counsel, Matthew L. Bretz (Bretz) of Hutchinson, Kansas, appeared on behalf of his law firm, Bretz & Young, LLC. P. Kelly Donley of Wichita, Kansas, appeared for respondent and its insurance carrier (respondent).

The ALJ found Bretz entitled to an attorney fee in the amount of \$15,834.00, or 25 percent of the \$63,336.00 in temporary total disability (TTD) benefits awarded to and received by claimant following a preliminary hearing. The ALJ noted claimant executed an Attorney-Client Agreement with Bretz on April 2, 2010, whereby claimant agreed she understood there would be a lien on all sums recovered in this case.

The record on appeal is the same as that considered by the ALJ and consists of the transcript of the April 8, 2015, Motion Hearing and the exhibits, together with the pleadings contained in the administrative file.

ISSUES

Claimant argues Bretz is not entitled to the lien or fees because she terminated his services after only four months. Claimant argues Bretz' fees should be based upon *quantum meruit*. Claimant raises multiple issues related to her attorneys and the ALJ that

have no relevance to the Order being appealed and for which the Board has no jurisdiction to review.

Bretz maintains his firm, pursuant to written contract and statute, has earned the 25 percent attorney fee on the TTD benefits received by claimant, and the ALJ's Order should be affirmed. Further, Bretz argues claimant failed to appeal the ALJ's award of fees to his office, and there does not appear to be any statutory basis for an appeal of the ALJ's Order.

Respondent contends it has no argument related to the issue of this appeal.

The sole issue before the Board is: is Bretz entitled to attorney fees under K.S.A. 2014 Supp. 44-536?

FINDINGS OF FACT

Claimant retained the services of Bretz' law firm to pursue a workers compensation claim on April 2, 2010. On that date, claimant signed an Attorney-Client Agreement for Workmen's Compensation, wherein she agreed to the following:

As full compensation for their services, I agree to pay to my said attorneys twenty-five percent (25%) pursuant to K.S.A. 44-536, plus all actual costs. PROVIDED, HOWEVER, THAT THE UNDERSIGNED SHALL NOT BE LIABLE FOR ATTORNEY FEES IF NO RECOVERY IS MADE.

It is understood and agreed that my said attorneys shall not be entitled to any compensation for their services unless and until settlement or collection of my claim has been made or my attorneys have obtained for me temporary total wage (TTD) benefits, and that my attorneys shall have no right to compromise or settle my claim without my consent, but may try said case.

...

The undersigned understands that said attorneys have a lien on all sums recovered in this case for the percentages charged as attorney fees and all costs expended in connection with this case.¹

Mitchell W. Rice (Rice), at the time an attorney in Bretz' office, filed an Application for Hearing with the Division on April 13, 2010. He served a Notice of Intent on respondent that same day. An Application for Preliminary Hearing was filed with the Division on April 22, 2010.

¹ M.H. Trans., Ex. 17 at 1.

A preliminary hearing was held before ALJ Bruce Moore on June 10, 2010. ALJ Moore determined claimant was entitled to medical care and designated an authorized treating physician. He further ordered TTD paid in the amount of \$546 per week beginning May 15, 2010, until such time claimant is released to return to work, has been offered accommodated work within temporary work restrictions, attained maximum medical improvement, or until further order of the court.²

Respondent did not initially pay the ordered TTD, and Rice filed a Demand for Compensation on June 30, 2010, in addition to an Application for Penalties filed July 21, 2010. Respondent began payment of TTD to claimant on July 22, 2010.³

Claimant terminated Rice and Bretz on August 3, 2010, indicating she was displeased with the services received. Rice then filed a Notice of Attorney Fee Lien with the Division on August 13, 2010, for an amount of \$80.11 in expenses plus 25 percent of all TTD benefits and any settlement or award made in this claim.

ALJ Moore signed an Order for Withdrawal on October 5, 2010, and Scott Mann (Mann) entered his appearance on behalf of claimant on October 28, 2010. Mann directed respondent to continue sending the payments directly to claimant as he was not retaining fees related to the TTD.⁴

Bretz filed a Notice of Attorney Fee Lien on August 13, 2010. Bretz filed a Motion for Approval of Attorney Fees on March 17, 2011. That hearing was continued until April 8, 2015. The ALJ declined claimant's request for a continuance, stating all necessary information would be obtained at the hearing.⁵

A total of \$63,336.00 in TTD benefits have been paid to claimant. Of these payments, Bretz has collected \$1,462.70.

PRINCIPLES OF LAW AND ANALYSIS

The Kansas Court of Appeals has ruled that attorneys who are discharged before the contingency provided in a contingency fee contract may not, generally, recover the contingency fee. Instead, the fees are to be determined based upon the reasonable value

² See M.H. Trans., Ex. 2 at 1.

³ See M.H. Trans., Ex. 14 at 3.

⁴ See M.H. Trans., Exs. 15 & 16.

⁵ See M.H. Trans. at 12-13.

of the services the attorney has rendered, or under *quantum meruit*.⁶ However, *quantum meruit* does not apply after the contingency has been met.⁷ In this case, *quantum meruit* does not apply because the contingency occurred when the ALJ ordered TTD benefits.

CONCLUSION

Pursuant to K.S.A. 2009 Supp. 44-536, Bretz is entitled to an attorney fee in an amount equal to 25 percent of TTD benefits received by claimant as the result of Rice's efforts.

ORDER

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Thomas Klein dated June 12, 2015, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of October, 2015.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

⁶ See *Madison v. Goodyear Tire & Rubber Co.*, 8 Kan. App. 2d 575, Syl. ¶ 5, 663 P.2d 663 (1983).

⁷ See *Hartley v. Recreational Vehicle Products*, No. 217,596, 2000 WL 1864268, at *6 (Kan. WCAB Nov. 28, 2000).

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Thomas Klein, Administrative Law Judge